

ESTTA Tracking number: **ESTTA577714**

Filing date: **12/19/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213491
Party	Defendant Active Life Events, Inc.
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Date	12/19/2013
Attachments	UGLY SWEATER DASH - ANSWER TO PET FOR CANCELLATION D1.pdf(246239 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HUMAN MOVEMENT, LLC,)	Opposition No. 91213491
)	
)	Serial No.: 85/821,651
Opposer,)	
v.)	Mark: UGLY SWEATER DASH
)	
ACTIVE LIFE EVENTS, INC.,)	Filed: January 11, 2013
)	Published: July 16, 2013
Applicant.)	Class: 41
_____)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant, Active Life Events, Inc., a California corporation with a mailing address of 33562 Yucaipa Blvd. # 4 – PMB # 141, Yucaipa, CA 92399, (hereinafter “Applicant”), hereby answers the Notice of Opposition (“Opposition”) filed by Human Movement, LLC (hereafter “Opposer”) against registration of Applicant’s U.S. service mark “UGLY SWEATER DASH” as set forth below.

Applicant hereby generally and specifically denies each and every allegation contained in the Opposition hereinafter not specifically admitted, modified, or qualified, and strict proof is demanded thereof. Applicant denies any and all other prefatory remarks and allegations in the introductory paragraph of the Opposition and further responds as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Opposition and therefore, on that basis, denies same.
2. Applicant admits that it is California corporation with a business address of 33562 Yucaipa Blvd. #4 – PMB#141, Yucaipa, California 92399.
3. Applicant is without knowledge or information sufficient to form a belief as to the

truth of the allegations contained in Paragraph 3 of the Opposition and therefore, on that basis, denies same. Applicant further specifically denies that “Opposer is recognized within its field as a leader in developing and administering any such” “[community sporting and cultural events]”.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Opposition and therefore, on that basis, denies same. Applicant further specifically denies that “Opposer owns common law rights in the mark UGLY SWEATER RUN.”

5. Applicant admits only that according to the online records of the United States Patent & Trademark Office, United States Trademark Application serial nos. 85/863,141 and 85/863,390 were respectively filed in the name of Human Movement, LLC in connection with “entertainment services, namely, organizing community foot race sporting and cultural events.” Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Opposition and therefore, on that basis, denies same. Applicant further denies that “[b]oth applications were filed on February 29, 2013” as such allegation is contradicted by the online records of the USPTO and because no such date ever existed.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Opposition and therefore, on that basis, denies same.

7. Applicant denies the allegations contained in Paragraph 7 of the Opposition.

8. Applicant admits only that it organizes community cultural and sporting events, including themed foot races.

9. Applicant denies the allegations contained in Paragraph 9 of the Opposition.

10. Applicant admits only that as on January 11, 2013, it caused to be filed the Application for UGLY SWEATER DASH in connection with the services therein specified.

11. Applicant admits the allegations contained in Paragraph 11 of the Opposition.

12. To the extent that Applicant understands the allegations contained in Paragraph 12 of the Notice of Opposition, Applicant admits only that prior to the date of filing of U.S. Application Serial No.: 85/821,651, for the mark UGLY SWEATER DASH, namely January 11, 2013, that Applicant did not use the mark UGLY SWEATER RUN in commerce. Applicant denies the remaining allegations.

13. Applicant objects to the allegations contained in Paragraph 13 of the Opposition on the grounds that such allegations are vague and ambiguous, immaterial, inflammatory, scandalous, and oppressive, and further, to the extent that they refer to settlement discussions of the parties occurring after the occurrence of the apparent dispute. Otherwise, to the extent that the Applicant understands the allegations of contained in Paragraph 13 of the Opposition, Applicant denies such allegations.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Opposition and therefore, on that basis, denies same.

15. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Opposition and therefore, on that basis, denies same.

16. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Opposition and therefore, on that basis, denies same.

17. Applicant is without knowledge or information sufficient to form a belief as to

the truth of the allegations contained in Paragraph 17 of the Opposition and therefore, on that basis, denies same.

18. Applicant denies the allegations contained in paragraph 18 of the Opposition.

19. Applicant denies the allegations contained in Paragraph 19 of the Opposition.

20. Applicant denies the allegations contained in Paragraph 20 of the Opposition.

21. Applicant denies the allegations contained in Paragraph 21 of the Opposition.

22. Applicant denies the allegations contained in Paragraph 22 of the Opposition.

23. Applicant denies the allegations contained in paragraph 23 of the Opposition.

Applicant denies the prayer for relief and requests that the Opposition be dismissed.

AFFIRMATIVE DEFENSES

1. The Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state any legally sufficient grounds for sustaining the Opposition.

2. Applicant lacks any standing to bring the Opposition, and in particular has failed to properly allege any cognizable claim of injury.

3. Upon information and belief, Applicant's unique and fanciful, UGLY SWEATER DASH mark when viewed as a whole and used in connection with Applicant's services, is not likely to cause confusion, or to cause mistake, or to deceive as to any affiliation, connection, or association with any of Opposer's purported marks, when viewed as a whole, and considered in light of the marketplace realities of Opposer's alleged use of its own goods and services asserted.

4. To the extent that the Applicant's UGLY SWEATER DASH mark similarly contains only the common descriptive term "UGLY SWEATER" in its apt and descriptive sense, when considering the services of the Applicant, upon information and belief, the relevant

consuming public has not been, and is not likely to be confused by with any of the Opposer's asserted marks, nor with any of its goods and services that Opposer has asserted to have used in any particular geographical location.

5. Opposer does not own any trademark rights in the word elements "UGLY" "SWEATER" "DASH" or "RUN" alone, or in any combination, including, "UGLY SWEATER RUN." Unlike the Applicant's distinctive mark UGLY SWEATER DASH which evokes the holiday spirit of "dashing" (through the snow), the composite term asserted by Opposer, namely UGLY SWEATER RUN does not create a separate nondescriptive meaning.

6. To the contrary of the matters alleged in the Opposition, as was observed by the Examiner assigned to review Opposer's asserted U.S. Application Ser. No. 85/863,141:

"[t]he applied-for mark (UGLY SWEATER RUN) merely describes the purpose of (Opposer's) goods and/or services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(b), 1209.03 et seq." ... "UGLY SWEATER RUN for use in association with 'Entertainment services, namely, organizing community foot race sporting and cultural events.' ... The terms "UGLY SWEATER RUN" appears identify a feature of the services in that the applicant provides races where they encourage runners to wear their ugliest sweaters. The attached website and specimen indicates the services provide runs where they encourage runners to 'rummage up the Ugliest Sweaters you can find and celebrate the Holidays by participating in the best 5k of the year.' The term 'race' is defined as "[a] competition of speed, as in running or riding." ... "The composite mark does not create a separate nondescriptive meaning."

7. Further to the contrary of Opposer's allegations, and as conclusive evidence that Opposer has no rights in the word composite "UGLY SWEATER RUN," and such composite is merely descriptive when applied to "entertainment services, namely organizing community foot race sporting and cultural events." As was particularly observed by the Examiner assigned to

review Opposer's asserted U.S. Application Ser. No. 85/863,390: "(Opposer) must disclaim the descriptive wording "UGLY SWEATER RUN" apart from the mark as shown because it merely describes a feature of the services in that the (Opposer) is providing running races wearing ugly sweaters. See 15 U.S.C. §1056(a); TMEP §§1213, 1213.03(a). See attached Internet article identifying the races as runs where the participants wear ugly sweaters."

8. Upon information and belief, Opposer has, or will have abandoned one or both of Opposer's asserted U.S. Application Ser. Nos. 85/363,141 and 85/863,390 and thusly, any claim based thereon is moot.

9. Upon information and belief, Opposer has, or will have abandoned one or both of Opposer's asserted U.S. Application Ser. Nos. 85/363,141 and 85/863,390. Based on Opposer's response and/or failure to respond to the Examiner's office action(s) issued therein on June 18, 2013, Opposer should be collaterally estopped and precluded herein from asserting any finding made in the office action and/or from presenting any arguments in contravention to its response and/or failure to respond respectively therein.

In view of the foregoing, Applicant maintains that the Opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or is likely to be, damaged by the Applicant's Application. Therefore, Applicant prays that the Opposition be dismissed

ANDERSON & ASSOCIATES

Dated: December 19, 2013

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Certificate of Service

I hereby certify that on the date set forth below, a true copy of the foregoing Answer to Opposition is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the attorney for Opposer as follows:

Katherine Keating
Bryan Cave LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994

Dated: December 19, 2013

/StephenLAnderson/

Stephen L. Anderson